

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

RANDY BRYANT WICK,

Plaintiff,

vs.

WARDEN FLETCHER, MONTANA  
STATE PRISON, and STATE OF  
MONTANA,

Defendants.

CV 18–00072–H–BMM–JTJ

ORDER

Plaintiff Randy Bryant Wick (“Wick”), a former prisoner proceeding without counsel, filed a complaint (Doc. 2) alleging Defendants were deliberately indifferent to his safety and medical needs. The Court advised Wick that his Complaint failed to state a federal claim for relief and was subject to dismissal. (Doc. 8). Wick was given an opportunity to file an amended complaint and was specifically advised that if he failed to correct the defects in his Complaint, the Court would dismiss this matter. (*Id.*)

Magistrate Judge Johnston entered his Finding and Recommendations in this matter on March 19, 2019. (Doc. 9.) Judge Johnston determined that Wick had failed to file an amended complaint. For the reasons set forth in the Court’s Order of March 11, 2019, (Doc. 8), the Court finds that Wick has failed to state a federal

claim upon which relief may be granted and the failure meets the requirements for dismissal.

Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). The Court finds no error in Judge Johnston’s Findings and Recommendations.

**IT IS ORDERED** that Judge Johnston’s Findings and Recommendations (Doc. 9.) are **ADOPTED IN FULL**.

**IT IS FURTHER ORDERED** that Wick’s action is **DISMISSED** for failure to state a federal claim.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have

merit. The record makes plain the Complaints lack arguable substance in law or fact.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

DATED this 23rd day of May, 2019.



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Brian Morris  
United States District Court Judge